

AMENDED IN SENATE JULY 17, 2003

AMENDED IN SENATE JUNE 10, 2003

AMENDED IN ASSEMBLY MARCH 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1051

Introduced by Assembly Member Goldberg

February 20, 2003

An act to amend Section 54999.1 of, and to add Sections 54999.7 and 54999.8 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1051, as amended, Goldberg. Capital facilities fees.

Existing law authorizes a public agency that provides public utility service, as defined, to impose a capital facilities fee on any school district, county office of education, community college district, the California State University, the University of California, or state agency, subject to certain restrictions. Existing law defines the terms “capital facilities fee” or “capacity charge” as any nondiscriminatory charge to pay the capital cost of a public utility facility, *and defines the term “nondiscriminatory” for these purposes.*

This bill would revise the definition of the term “public utility service.” It would revise the definition of the term “capital facilities fee” to mean a nondiscriminatory charge, including, but not limited to, a connection fee, as defined, capacity charge, as defined, or both. The bill would ~~require any judicial action or proceeding to seek a refund of a capital facilities fee, or~~ *define the term “nondiscriminatory” with respect to a service rate, commodity charge, or surcharge, as defined,*

~~or increase, or challenging the validity of a capital facilities fee, service rate, commodity charge, or surcharge, or increase, paid by a public agency to be commenced as specified. It would require any action by a public utility service provider to be in accordance with specified law, and would place on the public agency imposing the capital facilities fee, service rate, commodity charge, or surcharge, or increase, the burden of producing evidence, as prescribed.~~

The bill, notwithstanding any of the existing provisions relating to the imposition of a capital facilities fee, would authorize a public agency that provides public utility service to charge a public agency nondiscriminatory ~~service rates or charges, on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, including the costs of operation, maintenance, construction, repair, replacement, or rehabilitation of facilities, or debt service payments on facilities, not in excess of the reasonable cost of providing the public utility service~~ *monthly or periodic service rates, commodity charges, or surcharges, according to specified criteria.*

The bill would make specified declarations with respect to its provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 54999.1 of the Government Code is
- 2 amended to read:
- 3 54999.1. For purposes of this chapter:
- 4 (a) “Actual construction costs” includes the cost of all
- 5 activities necessary or incidental to the construction of a public
- 6 utility facility, such as financing, planning, designing, acquisition
- 7 of property or interests in property, construction, reconstruction,
- 8 and rehabilitation.
- 9 (b) “Capacity charge” means ~~a~~ *any* charge imposed on
- 10 customers who are requesting new public utility services and that
- 11 is designed to recover costs of public utility facilities necessary to
- 12 serve new customers.
- 13 (c) ~~(1)–~~“Capital facilities fee” means any nondiscriminatory
- 14 charge imposed to pay for public utility facilities, including, but
- 15 not limited to, a connection fee, a capacity charge, or both.

1 “Capital facilities fee” does not include a service rate, commodity
2 charge, or surcharge, or any capital component thereof.

3 ~~(2) A capital facilities fee, service rate, commodity charge, or~~
4 ~~surcharge is imposed on the date on which the fee, rate, charge, or~~
5 ~~surcharge is adopted by the public agency imposing it.~~

6 (d) “Connection fee” means a fee for the physical facilities
7 necessary to connect a public agency facility to a public utility,
8 including, but not limited to, meters, meter boxes, and pipelines to
9 make the connection, that does not exceed the actual cost of labor
10 and materials for the installation of those facilities.

11 ~~(e) “Nondiscriminatory”—(1) With respect to a capital~~
12 ~~facilities fee, “nondiscriminatory” means that the capital facilities~~
13 ~~fee does not exceed a proportionate amount determined on the~~
14 ~~basis of the same objective criteria and methodology applicable to~~
15 ~~comparable nonpublic users; users, and is not in excess of the~~
16 ~~proportionate share of the cost of the public utility facilities of~~
17 ~~benefit to the person or property being charged, based upon the~~
18 ~~proportionate share of the use of those facilities.~~

19 (2) With respect to service rates, commodity charges, or
20 surcharges imposed upon a public agency by a public agency that
21 provides public utility service, “nondiscriminatory” means that
22 the rate, charge, or surcharge is not in excess of the reasonable cost
23 of providing the public utility service on a meter or volumetric
24 basis proportioned by customer usage, to the maximum extent
25 feasible within the rate structure, or as can be provided for in a flat
26 rate structure. Rates and charges for wastewater discharge shall
27 be based upon any of the following:

28 (A) A volumetric basis proportioned by customer usage.

29 (B) The basis of average flows and loadings for wastewater
30 discharge.

31 (C) An equivalent dwelling unit methodology.

32 (D) Any other computational methodology to determine
33 proportionate customer usage, to the maximum extent feasible
34 within the rate structure, or as can be provided for in a flat rate
35 structure.

36 (f) “Public agency” means the United States or any of its
37 agencies, the state or any of its agencies, the Regents of the
38 University of California, a county, a city, a district, a public
39 authority, or any other political subdivision or public corporation
40 of this state.

(g) “Public utility facility” means a facility for the provision of water, light, heat, communications, power, or garbage service, for flood control, drainage or sanitary purposes, or for sewage collection, treatment, or disposal.

(h) “Public utility service” means service for water, light, heat, communications, power, or garbage, or for flood control, drainage or sanitary purposes, or sewage collection, treatment, or disposal, provided by a public agency.

~~(i) “Service rate” or “commodity charge”~~ (1) “Service rate,” “commodity charge,” or “surcharge” means a rate or charge, including any capital component thereof, and with respect to sewer services, the service fee or service charge, billed on a monthly or periodic basis to all users to recover the costs of providing public utility services to those users, including the costs of operation, maintenance, construction, repair, replacement, or rehabilitation of facilities, or debt service payments on facilities.

(2) A service rate, commodity charge, or surcharge is imposed on the date on which the fee, rate, charge, or surcharge is adopted by the public agency imposing it.

(3) A surcharge may be included in the same billing statement as the service rate or commodity charge.

(j) “State agency” or “state” means any state office, department, division, bureau, board, or commission.

~~(k) (1) “Surcharge” means any additional charge or charges billed on a monthly or periodic basis to all customers of a public utility service provider for a particular purpose.~~

~~(2) A surcharge may be included in the same billing statement as the service rate or commodity charge.~~

SEC. 2. Section 54999.7 is added to the Government Code, to read:

54999.7. (a) Any judicial action or proceeding to seek a refund of a capital facilities fee, service rate, commodity charge, or surcharge, or increase in any of those costs, or challenging the validity of a capital facilities fee, service rate, commodity charge, or surcharge, or increase, imposed on or after January 1, 2004, by a public agency pursuant to this chapter, shall be commenced within 120 days of the effective date of the imposition of the capital facilities fee, service rate, commodity charge, or surcharge, or increase.

~~(b) Any action by a public agency under this chapter to validate an ordinance, resolution, or motion imposing or increasing a capital facilities fee, service rate, commodity charge, or surcharge shall be in accordance with Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. However, any action by a public agency imposing or increasing the capital facilities fee, service rate, commodity charge, or surcharge may be commenced no earlier than 120 days from the effective date of the imposition of the capital facilities fee, service rate, commodity charge, surcharge, or increase. The public agency imposing or increasing the capital facilities fee, service rate, commodity charge, or surcharge shall have the burden of producing evidence to establish that it is nondiscriminatory and that, in the case of capital facilities fees, the amount of the capital facilities fee or increase does not exceed the amount necessary to provide capital facilities for which the fee is charged.~~

~~SEC. 3.— Section 54999.8 is added to the Government Code, to read:~~

~~54999.8.— Notwithstanding any other provision of this chapter, a public agency that provides public utility service may charge a public agency nondiscriminatory, monthly or periodic service rates, commodity charges, or surcharges, on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, including the costs of operation, maintenance, construction, repair, replacement, or rehabilitation of facilities, or debt service payments on facilities, that are not in excess of the reasonable cost of providing the public utility service.~~

~~SEC. 2. Section 54999.7 is added to the Government Code, to read:~~

~~54999.7. (a) Notwithstanding any other provision of this chapter, a public agency that provides public utility service may charge a public agency nondiscriminatory monthly or periodic service rates, commodity charges, or surcharges. A public agency providing public utility service proposing to increase a service rate, commodity charge, or surcharge in excess of the percentage increase in the Implicit Price Deflator for State and Local Government Purchases, as determined by the Department of Finance as measured from the effective date of the existing rate or charge to the effective date of the proposed rate or charge, shall notify by certified mail any school district, county office of~~

1 education, community college district, California State
2 University, University of California, or state agency located within
3 its service area that is a water, sewer, or electric utility customer
4 of the public agency, not less than 30 days prior to the date of any
5 hearing set to consider an ordinance, resolution, or motion
6 enacting or increasing such a service rate, commodity charge, or
7 surcharge. The notice shall state the date, time, and place of any
8 hearing.

9 (b) The notice described in subdivision (a) shall designate an
10 individual at the public agency that provides public utility service
11 who shall make available, upon request, for review and inspection
12 by any school district, county office of education, community
13 college district, California State University, University of
14 California, or state agency located within its service area, the
15 specific information relied upon in setting the service rate,
16 commodity charge, or surcharge, or increase thereto, including
17 any capital component of the rate increase, and including the
18 methodology used to calculate and allocate the expenditures
19 giving rise to the service rate, commodity charge, or surcharge, or
20 increase thereto. The affected school district, county office of
21 education, community college district, California State
22 University, University of California, or state agency shall
23 designate the individual who is to receive the notice, and the public
24 agency providing public utility service shall direct the notice to
25 that individual. If no individual is designated, then the notice shall
26 be addressed to the billing address of the affected facility.

27 (c) In these rate matters, a public agency that is a customer of
28 a public utility provider shall participate in a public process within
29 that ratesetting cycle, including, but not limited to, any public
30 hearings of the public utility on ratesetting issues.

31 (d) A public agency that is a customer of a public agency that
32 provides public utility services may petition the trial court to
33 invalidate a ratesetting that is not in compliance with the
34 requirements of paragraph (2) of subdivision (e) of Section
35 54999.1. If one or more public agencies prevail on two separate
36 and distinct rate invalidation proceedings within three rate cycle
37 periods of three years each, the public agency providing public
38 utility services shall thereafter be required to initiate validation
39 proceedings for the three subsequent ratesetting cycles in
40 accordance with Chapter 9 (commencing with Section 860) of Title

1 10 of Part 2 of the Code of Civil Procedure and shall pay costs,
2 including reasonable attorney fees, for both parties to such a
3 validating proceeding.

4 SEC. 3. Section 54999.8 is added to the Government Code, to
5 read:

6 54999.8. Nothing in this chapter is intended to allow costs to
7 be shifted from other ratepayers to a school district, county office
8 of education, community college district, the California State
9 University, the University of California, or a state agency, except
10 as expressly provided in law.

11 SEC. 4. The provisions of this act are not intended to affect any
12 litigation involving public utility services provided prior to
13 January 1, 2004, brought prior or subsequent to that date. Nothing
14 in the legislative history of this act should be construed as any
15 indication of the meaning of the law as it existed prior to the
16 effective date of this act.

